

Current Issues in WA Residential Real Estate A 3-Hour Mandated Curriculum and Learning Objectives for 2016-2017 Draft 1/28/2015

Legislative/Legal Updates

Upon completion of this section, the student will be able to:

- ~~1. Recognize that language in 18.86 RCW was updated in the statute to reflect the Licensing Law (18.85 RCW) revisions that occurred in 2010.~~
- 2.1. Demonstrate how to create a dual agency relationship by separately entering an agency agreement with both the seller and with the buyer in addition to complying with statutory requirements for disclosure. (differing opinions on dual agency, clarify with legal)
- ~~3.2.~~ Explain that brokers are required to perform all agency duties established by the Agency Law but brokers are not required to perform fiduciary duties. (expand to talk about breach, disclosures, etc., highlight distinction between statutory vs. fiduciary duties)
- 4.3. Recognize that Washington Courts seem to be in flux as to the status of seller disclosure versus caveat emptor and that it is more important than ever for buyers to be advised to conduct thorough inspections prior to purchasing. (emphasize the importance; add As Is clauses)
 - a. Douglas v. Visser, 295 P.3d 800 (2013) and other published opinions.
 - b. Agency Law duty for brokers to disclose material facts actually known by broker; no duty to investigate; reasonable reliance.
- ~~5.4.~~ Demonstrate the proper way to make referrals to third party vendors, both pursuant to [RCW 18.86](#) and [RCW 18.235.130](#) and to minimize risk at the same time as providing competent referrals. (add vicarious liability)
 - a. Recognize the importance of making referrals when a subject matter exceeds the scope of a broker's license, that it is okay for a broker to not have all the answers.
5. Recognize what constitutes proof of signatory authority for clients such as guardians, power of attorney, personal representatives, corporations, LLC's, and trustees.
6. Add current court cases and law – federal and state

Distressed Properties, Short Sales, and REO Sales

Upon completion of this section, the student will be able to:

- ~~1. Explain that not all licensees are equipped with the proper training and experience to handle distressed properties, short sales, REO, and properties in receivership or bankruptcy. Sometimes the most appropriate service a licensee can give such a property owner is to refer them to legal counsel and/or to another licensee who has the training and experience to handle such property.~~
- ~~2. Explain the distinctions between providing real estate services and engaging in the unauthorized practice of law. The student must be aware of the advantages and disadvantages of involving "short sale negotiators," lawyers and other professionals, particularly if the persons involved lack the experience or license to provide the services. The student should recognize the risk of referring unlicensed individuals and the risks of promising compensation to "short sale negotiators."~~
- ~~3.1. Identify the risks and recall limitations on licensee's authority to complete blanks in forms that are not standardized for licensee's use, including forms mandated by REO sellers, short sale negotiators and others. Have a working knowledge of the Heritage House case in relationship to the unauthorized practice of law in short sale, REO, and foreclosure situations. (move to Others)~~
- ~~4.2. Explain how REO sales continue to present some difficulties simply because some REO sellers do not seem to believe they have to comply with Washington State real estate law. As a consequence, REO sales are often handled orally with buyers left in a vulnerable position for weeks. (move to Others)~~
- ~~5.3. Explain that it is important that licensees document all requests made to the REO seller for Seller's Disclosures, Legal, and other locally required forms or addenda that may not be provided by the REO seller. Licensees should explain to the buyer their options with regards to locally required forms or addenda (i.e. Legal Description, Seller Disclosures, Law of Agency), and explain that buyer may seek legal advice when locally required forms or addenda are not provided by the REO seller. (move to Others)~~

The instructor is encouraged to use current forms and addenda such as short sale addenda, for general discussion as applicable to the practice area of the audience.

Assistants-Unlicensed Guidelines

Upon completion of this section, the student will be able to:

- ~~1. Identify the requirements for licensure under RCW 18.85.011
 - ~~a. Identify how this applies to using licensed and/or unlicensed assistants for brokers and property managers, and be able to explain the limitations on what an unlicensed assistant can and cannot do (refer to Department of Licensing Guidelines).~~~~

Advertising and Social Media Guidelines

Upon completion of this section, the student will be able to:

1. Explain “One Click Away”
2. Explain the Licensing Law requirements for all advertising, with a special emphasis on advertising in Social Media. This component cannot be used to explain or demonstrate how to utilize social media or how to incorporate social media into a marketing plan.
3. Identify the issues and licensee responsibilities when using 3rd party websites (anything not directly controlled by MLS or a firm). Inform students that licensees must keep the information up to date and ensure the accuracy of the data. Students should be reminded of the requirement to identify their license status on all internet websites or advertising forums.

3.4. add Deceptive Trade Practices

(link to **Social Media & Internet Guidelines for Real Estate Professionals** [text](#) and [video](#))

Fair Housing Issues (Federal Fair Housing Act & WA Law on Discrimination RCW 49.60)

Upon completion of this section, the student will be able to:

1. Explain that under Federal, State, and Local laws, a real estate broker, a property manager, a landlord, or a seller cannot discriminate, show a preference or limitation toward a buyer based on a protected class. (**Instructors to provide examples**)
2. Describe the Federal and Washington State protected classes and local Fair Housing protected classes where applicable.
3. Explain why introductory letter from a buyer or a broker to the seller that includes references to “protected classes” potentially places the brokers and seller at risk for violating federal, state, and local Fair Housing and Discrimination laws. (**Instructors are encouraged to use examples.**)
4. Describe what disciplinary action could be taken by the Washington State Department of Licensing if Fair Housing Laws are violated under Washington State License Law ([RCW 18.85.361](#))

Multiple Offers

In situations where multiple offers are anticipated and/or presented on a property, the student will be able to:

1. Explain to buyers and sellers how to prepare and evaluate offers based on a buyer’s ability to close on terms acceptable to seller, and how not to prepare or evaluate offers based on discriminatory information or protected classes.

2. Explain how to use Escalation Clauses/Addendums, Evidence of Funds documents and other firm approved forms when preparing or presenting multiple offers.
3. Explain how the seller can counter any offer and accept offers in “first and backup” positions, but that care must be taken so sellers do not accept multiple offers in “first position”.

Property Management

Upon completion of this section, the student will be able to:

1. Explain why real estate licensees cannot perform property management without approval from their designated broker unless it's their own property (WAC or RCW?).
2. Explain that property management is a real estate activity and the designated broker has responsibility for property management activities done by his or her licensees.
3. Describe the necessary agreements, record keeping, and funds management procedures associated with property management as described by WAC 308-124D-215. The student will indicate awareness of how funds are to be treated as trust funds where appropriate.
- ~~4. Identify which Property Management functions can be authorized in the firm's written policy and written delegation agreements.~~
4. (Is a broker allowed to do FSBO?)

Others

Upon completion of this section, the student will be able to:

1. Explain why professional cooperation between real estate licensees is in the best interests of licensees and consumers.
2. Explain how pocket listings can create liability for licensees and how pocket listings are not in the best interests of licensees, firms, and consumers (lack of market exposure, Fair Housing violations, etc.).
3. DOL Practices on
 - a. Social Media
 - b. Unlicensed assistants
 - c. property management
- ~~b. 4. Escrow Agents~~
5. Oso – refer people
6. Broker Safety – make good decisions
7. Research on update on Exhibit A (OIC) and check on updates